

EXHIBIT

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IN THE UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
www.flsb.uscourts.gov

IN RE:)
)
ULRICH FELIX ANTON ENGLER;)
PRIVATE COMMERCIAL OFFICE, INC.;)
and PCO CLIENT MANAGEMENT, INC.)
)
Debtor.)
_____ /

Chapter 7
CASE NO. 9:08-bk-04360-MGW

RICHARD MCDONALD'S DEPOSITION EXCERPTS FROM FEBRUARY 13, 2012

-Page 10 Line 11 to Page 11 Line 21

10

11 Q. Can you tell me what topics you are here to
12 testify about and have been designated for, so that I
13 can understand the scope of the questioning that I can
14 present?

15 A. I would say 5.

16 MR. HENDRIX: He is here for portions of
17 paragraphs 1, he's here for 2, 4, 6, 7, 8, 9 and
18 portions of 10.

19 11 and 12 are subject to court order ordering
20 his testimony not be given so no one is here to
21 testify to those.

22 MS. ELLIOTT: I'm sorry, that was 11 and 12?

23 MR. HENDRIX: 11 and 12 and 13 portions --
24 you're looking for SAR-related material. The
25 Court has already entered an order on that.

11

1 You're familiar with that order, I take it?

2 MS. ELLIOTT: I am familiar with the order,
3 but I also don't agree the scope of the order
4 covers any questioning as to these topics, nor
5 was this objection to these raised before today.

6 MR. HENDRIX: Doesn't have to be raised for
7 today.

8 MS. ELLIOTT: We're going to have to certify
9 this and go to Judge Williamson on it, and I'm

10 happy to leave the deposition and --

11 MR. HENDRIX: Why don't you ask the question.

12 The proper way to do it is ask the question; we
13 objection; you certify the question and we'll see
14 what Judge Williamson wants to talk about.

15 MS. ELLIOTT: That's fine. But in any event,
16 he is not here in any capacity to speak to 11, 12
17 or 13; correct?

18 MR. HENDRIX: No. No back door on the court
19 order.

20 MS. ELLIOTT: He mentioned No. 5, you did
21 not. Is he --

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12

5 Q. (BY MS. ELLIOTT:) Mr. McDonald, what portions
6 of No. 1 are you testifying as to?

7 A. As to my knowledge of these questions?

8 Q. Yes.

9 A. I have no knowledge of them.

10 Q. Let me ask that again: Mr. Hendrix has
11 represented that you are here to testify as to
12 portions of topic No. 1. Can you identify what
13 portions you will be testifying about or are prepared
14 to testify about?

15 A. I don't know anything about those topics.

16 Q. Okay.

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13

20 Q. (BY MS. ELLIOTT:) What did you do to prepare
21 for today's deposition?

22 A. I talked to John Barry and he told me we were
23 going to have a deposition today.

Page 14 Line 20 to Page 15 Line 20

14

20 Q. (BY MS. ELLIOTT:) Did you review any
21 documents in preparation for this deposition?

22 MR. HENDRIX: That you can answer.

23 A. Yes.

24 Q. What documents were those?

25 A. Copies of bank statements.

15

- 1 Q. Anything else?
2 A. There was a couple of checks that closed out
3 the accounts.
4 Q. Anything else?
5 A. And some signature cards.
6 Q. Anything else?
7 A. That's it.
8 Q. Without reviewing any advice provided to you
9 or to SunTrust Bank on the phone call with Mr. Hendrix
10 and Mr. Barry, was there any information, factual
11 information, provided to you to help you prepare for
12 this deposition?
13 A. No.
14 Q. How much time did you spend preparing for the
15 deposition?
16 A. Twenty, thirty minutes.
17 Q. Did you meet with anybody else?
18 A. No.
19 Q. Any other bank employees?
20 A. No.

-Page 21 Line 22 to Page 21 Line 25

21

- 22 Q. Are you prepared to testify today about
23 SunTrust's storage and preservation of its electronic
24 data?
25 A. No.

-Page 26 Line 21 to Page 26 Line 25

26

- 21 Q. Did you do anything to search or locate the
22 e-mail correspondence identified?
23 A. No.
24 Q. Why not?
25 A. Because I didn't believe we had any.

-Page 28 Line 20 to Page 29 Line 6

28

- 20 Q. At the time that you received this letter,
21 did you do anything to identify whether there were
22 other personnel responsible for the Engler accounts,

23 other than Tony Scott?

24 A. No.

25 Q. Why not?

29

1 A. I didn't know who they would be.

2 Q. Did anyone else at the bank undertake to
3 determine where there was additional personnel, other
4 than Tony Scott, who would have had responsibility for
5 the Engler accounts?

6 A. I don't know.

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9 Q. What department did you send it to?

10 A. I don't know, I didn't send it anywhere. I
11 don't know what a 314B is.

12 Q. When you were first processing the subpoena,
13 did you ask anyone what it was?

14 A. No.

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34

21 Q. This request asks for "All e-mail
22 communications pertaining to, concerning, referring,
23 relating to and/or reflecting", and there's a list of
24 accounts there; is that correct?

25 A. Yes.

35

1 Q. Who did you refer this request to?

2 A. No one.

3 Q. And that was based on your understanding that
4 there would be no responsive e-mails?

5 A. Well, we have like 30,000 employees. I
6 didn't know who to ask.

7 Q. Is there a process by which the subpoena
8 department uses to determine who should be asked for
9 e-mail communications when requesting a subpoena?

10 A. No.

11 Q. So if a subpoena does not identify specific
12 people you would have no way of determining who --

13 A. If they take the shotgun approach, absolutely
14 not.

-Page 36 Line 22 to Page 37 Line 3

36

22 Q. Do you understand that you have been
23 designated to testify today about the bank's response
24 to the subpoena?

25 A. Yes.

37

1 Q. But you're unable to tell me what was done
2 with response to this request?

3 A. Correct.

-Page 39 Line 2 to Page 39 Line 23

39

2 Q. (BY MS. ELLIOTT:) At any point, did anybody
3 instruct you to refer the subpoena to the fraud
4 detection department?

5 A. No.

6 Q. Do you know whether the subpoena was sent to
7 the fraud detection department at any point?

8 A. No.

9 Q. Does the bank have a compliance, a Bank
10 Secrecy Act compliance department?

11 A. I believe so.

12 Q. Was the subpoena ever referred to that
13 department?

14 A. I don't know.

15 Q. Is that department the same thing as the
16 fraud detection department?

17 A. I'm not sure.

18 Q. You mentioned earlier an entity called
19 SYMCOR; is that correct?

20 A. Yes.

21 Q. And you described that entity as a vendor
22 that maintains certain bank records?

23 A. Correct.

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20 A. I don't know. I've been told 90 days.

21 Q. 90 days from when?

22 A. I would imagine today.

23 Q. But you don't know?

24 A. No.

25 Q. Do you know whether there are exceptions to that

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1 90-day policy?

2 A. No.

3 Q. Do you know whether e-mails generated in the
4 course of an investigation about any accounts would be
5 maintained?

6 A. No.

7 Q. Who would know?

8 A. I don't know.

9 Q. Who would I talk to to learn about the e-mail
10 retention policy?

11 A. I don't know.

12 Q. How long are documents maintained that are
13 gathered as part of an investigation as to any
14 accounts at SunTrust Bank?

15 A. I don't understand.

16 Q. Does SunTrust Bank ever initiate an
17 investigation of any accounts?

18 A. I don't know of any investigation that
19 SunTrust trust would initiate.

20 Q. If somebody at SunTrust Bank did initiate an
21 investigation, do you know how long and where those
22 documents would be maintained?

23 A. No.

24 Q. Who would I speak to to learn that?

25 A. I have no idea.

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6 Q. Topic No. 1, SunTrust's policies and
7 practices concerning the deletion, backup, and
8 preservation of Electronic Data; are you prepared
9 today to testify about that topic?

10 A. No.

11 Q. Are you prepared to testify about the backup
12 schedule employed by SunTrust?

13 A. I don't quite understand the question. Can I
14 answer those questions or do I know about them?

15 Q. Do you know about them?

16 A. When you say "know about them", do you mean
17 do I know what the policies and procedures are?

18 Q. Correct.

19 A. No.

20 Q. Did you do anything to learn them in
21 preparation for today's deposition?

22 A. No.

23 Q. Did you do anything to learn about the backup
24 and preservation of data contained on the network
25 servers or other network storage devices?

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1 A. No.

2 Q. Did you do anything to prepare to testify
3 about the backup and preservation of data contained on
4 non-network storage devices, including laptops, home
5 computer systems and local drives of networked
6 computer systems?

7 A. No.

8 Q. Did you do anything to prepare to testify
9 today about the backup and preservation of data
10 contained on the hard drives of computer systems no
11 longer in active service?

12 A. No.

13 Q. Can you answer questions about any of those
14 things?

15 A. No.

16 Q. Topic 1(e), did you do anything to prepare to
17 testify about that?

18 A. No.

19 Q. Do you know about that?

20 A. No.

21 Q. Topic 1(f), did you do anything to prepare to
22 testify about that topic?

23 A. No.

24 Q. Are you prepared to answer questions with
25 regard to that topic?

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1 A. No.

2 Q. Topic 1(g), did you do anything to prepare or
3 educate yourself with regard to system upgrades by
4 SunTrust?

5 A. No.

6 Q. Are you prepared to answer questions about
7 that?

8 A. No.

9 Q. What about server upgrades, are you prepared
10 to testify about those?

11 A. No.

12 Q. Are you able to identify people with
13 responsibility for or knowledge of SunTrust's policies
14 and practices related the items described in (a)
15 through (h)?

16 A. No.

17 Q. Topic No. 2, did you do anything to prepare
18 to testify as to SunTrust's ability to store archived
19 electronic data?

20 A. No.

21 Q. Are you able to answer questions about that?

22 A. No.

23 Q. Topic No. 3, SunTrust's policies and procedures
24 related to backup data for current and former
25 employees and the implementation of such policies, did

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1 you do anything to prepare to testify about that
2 topic?

3 A. No.

4 Q. Are you able to answer questions about that?

5 A. No.

6 Q. Topic No. 4, did you do anything to prepare
7 to answer questions with regard to that topic?

8 A. No.

9 Q. Are you able to answer questions about topic
10 No. 4?

11 A. No.

12 Q. Topic No. 6, did you do anything to prepare
13 to testify as to that topic?

14 A. No. 6, is that what you said?

15 Q. Yes.

16 A. No.

17 Q. Are you able to answer questions as to that
18 topic?

19 A. No.

20 Q. For topics 2, 4 and 6, are you able to tell
21 me who I should ask about those topics?

22 A. No.

23 Q. Topic No. 7, did you prepare or educate
24 yourself with regard to that topic in preparation for
25 your testimony today?

66

1 A. No.

2 Q. You have answered some questions about
3 SunTrust's response to the subpoenas here today, is
4 that correct?

5 A. Yes.

6 Q. Do you know the identities of all individuals
7 from whom documents were requested for collected?

8 A. No.

9 Q Did you do anything to learn that information

10 and in preparing for today's deposition?

11 A. No.

12 Q. Who would I ask about that?

13 A. I don't know.

14 Q. Did you do anything to learn the locations
15 from which the documents were collected?

16 A. No. I know where they were collected.

17 Q. Do you do anything to learn where documents
18 were collected, other than from your requests?

19 A. No.

20 Q. Who would I ask about that?

21 A. I don't know.

22 Q. Other than your personal involvement, did you
23 do anything to learn about the decisions of who to ask
24 for documents and where to look for documents?

25 A. No.

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1 Q. Who would I ask about that?

2 A. I don't know.

3 Q. Would Mr. Barry know about that?

4 A. You would have to ask him.

5 Q. Topic 7(d), did you do anything to prepare to
6 answer questions with regard to that topic today?

7 A. No.

8 Q. Did you do anything to educate yourself and
9 prepare to testify with response to topic (e) today?

10 A. No.

11 Q. Can you answer questions about topic 7(e)
12 today?

13 A. No.

14 Q. Who would I ask about topic 7(e)?

15 A. I don't know.

16 Q. Other than your personal actions, did you do
17 anything to learn about the physical production of
18 documents and things?

19 A. No.

20 Q. Can you answer questions outside of your
21 personal involvement?

22 A. No.

23 Q. Who would I ask about the production of
24 documents and things?

25 A. I don't know.

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1 Q. Topic 8, the length of time and the means by
2 which e-mails and other electronic communications
3 relating to the Engler accounts are stored and

4 retained by SunTrust Bank, did you do anything to
5 prepare to testify as to that topic today?

6 A. No.

7 Q. Are you able to answer questions about that
8 today?

9 A. No.

10 Q. Who would I ask about that?

11 A. I don't know.

12 Q. Topic 9, SunTrust's search for and production
13 of electronic communications, including e-mails,
14 responsive to the trustee's subpoena; in preparing for
15 today's deposition, did you do anything to inform
16 yourself or learn about information responsive to that
17 topic?

18 A. No.

19 Q. Are you able to answer questions about that
20 today?

21 A. No.

22 Q. Who would I ask about that?

23 A. I don't know.

24 Q. Topic 10, the identity and actions taken by
25 Suntrust employees responsible for opening, monitoring

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1 and administering, and closing the Engler accounts;
2 did you do anything to repair to testify to that topic
3 today?

4 A. No.

5 Q. Are you able to answer questions about that
6 topic today?

7 A. No.

8 Q. Who would I ask about that topic?

9 A. I don't know.

10 Q. Any there any other topics that I have not
11 just gone through with you that you were prepared to
12 testify about today?

13 A. No.

14 Q. Are you familiar with the account that ended
15 in 4251?

16 A. Sitting here, no.

17 Q. When were the Engler accounts opened?

18 A. I don't know.

19 Q. Who would know about that?

20 A. Me.

21 Q. But you don't know today?

22 A. I don't have anything in front of me.

23 Q. Did you research that information in

24 preparing for today's deposition?

25 A. No.